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Ct. 18
25.04.2022

C.O. No. 3892 of 2019

Smt. Lisa Das
Vs.
Rajesh Bank & Ors.
Mr. Subhojit Saha ... For the petitioner.

Mr. Subhojit Saha, learned advocate for the petitioner files affidavit-of-service, which is taken on record.

The opposite parties are not represented in spite of service.

The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for declaration of title and injunction which is directed against the Order No. 66 dated August 27, 2019 passed by the 1st Court of learned Civil Judge, (Junior Division) at Serampore, District –Hooghly in the said suit being Title Suit No. 305 of 2013.

The defendants/opposite parties are contesting the said suit with a counter-claim.

The petitioner challenging the maintainability of the said counter-claim, filed an application. The learned Trial Judge, by the order impugned, has dismissed the said application.

Mr. Saha, learned advocate for the petitioner submits that the relief sought for by way of counter-claim is barred by limitation and the challenge to the title-deed of the plaintiff in the absence of the vendor of the said deed is not maintainable.

Heard Mr. Saha, perused the materials-on-record.

On perusal of the order impugned, it appears that the learned Trial Judge has overruled the aforesaid objections

of the plaintiff on the grounds that the provisions of Order VIII Rule 6A of the Code of Civil Procedure does not specify any period of limitation, as such, cannot be calculated as an abstract principle of law divorced from facts as in every case, the starting point of limitation has to be ascertained with reference to the facts of the said case and the issue of non-joinder of necessary parties shall be decided at the time of the trial of the suit.

There may not be any period of limitation in filing an application under Order VIII Rule 6A of the Code but before allowing a counter-claim, the Court is obliged to see whether or not the relief claimed by way of counter-claim is barred by limitation.

The defendants were aware that the plaintiff is tracing her title in the suit through a deed of purchase executed in the year 1997. The said suit was filed in the year 2013 and the defendants became aware of the said claim of the plaintiff as soon as the summons was served upon them. Therefore, the defendants, to get rid of the said deed on the ground that the same was obtained by forgery, were required to challenge the legality and propriety of it within three years from the date of alleged forgery or from the date when the registration of the said instrument comes within the knowledge of the defendants as prescribed under Article 56 of The Limitation Act, 1963. The alleged subsequent acquisition of knowledge of the said deed through a criminal proceeding will not enlarge the said period of limitation.

The learned Trial Judge therefore has acted with material irregularity in overruling the objection of the plaintiff as to the maintainability of the said counter-claim

on the ground of limitation.

Order VIII Rule 6A of the Code mandates that a defendant can maintain a counter-claim against the plaintiff in respect of a cause of action accruing to him either before or after filing of the suit but before the defendant have delivered his defence or before the time limited for delivering his defence has expired.

In the present case, the defendants have alleged that the cause of action of the counter-claim arose on January 07, 2015 whereas they have filed their written statement on April 10, 2014, therefore the said counter-claim is also not maintainable as it fails to fulfill the requirement of Order VIII Rule 6A of the Code.

The order impugned, for the aforesaid reasons is not sustainable and is accordingly set aside.

The counter-claim filed by the petitioner is dismissed as not maintainable. The learned Trial Judge is directed to dispose of the suit expeditiously in accordance with law.

C.O. 3892 of 2019 is allowed without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)